

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of

) CC Docket No. 94-11

TELEPHONE AND DATA SYSTEMS,
INC.

) File No. 10209-CL-P-715-B-88

For facilities in the Domestic Public
Cellular Telecommunications Radio Service
on Frequency Block B, in Market 715,
Wisconsin 8 (Vernon), Rural Service Area)
)
)
)
)
)To: Honorable Joseph P. Gonzalez
Administrative Law Judge

**COMMON CARRIER BUREAU'S COMMENTS IN SUPPORT OF
GTE MOBILNET INC.'S PETITION TO INTERVENE**

On March 16, 1994, GTE Mobilnet, Inc. (GTE) filed a Petition to Intervene in the captioned proceeding pursuant to Section 1.223(a) of the Commission's Rules. 47 C.F.R. § 1.223(a). The Acting Chief, Common Carrier Bureau (Bureau) hereby submits its comments in support of GTE's petition.

1. In Telephone and Data Systems, Inc., FCC 94-29 (released Feb. 1, 1994) (HDO), the Commission set aside the grant of Telephone and Data Systems, Inc. (TDS) for the Wisconsin 8 Rural Service Area (RSA) and designated its application for hearing. GTE was another applicant in that market. Because the grant of an authorization to TDS never became final, GTE's application for the Wisconsin 8 RSA remains pending. Should the application of TDS ultimately be denied and a new lottery held, GTE's application would be included in the new lottery for the authorization. Accordingly, GTE is a party in interest in the proceeding.

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2. Section 309(e) of the Communications Act, as amended, provides that any party in interest which is not notified by the Commission that an application has been designated for hearing, "may acquire the status of a party to the proceeding . . ." 47 U.S.C. § 309(e). Section 1.223(a) permits a party to intervene as a party in interest by showing the basis of the interest. Section 1.223(a) further states that "[w]here the person's status as a party in interest is established, the petition to intervene will be granted." 47 C.F.R. § 1.223(a).

3. By establishing that it is a party in interest, GTE has an absolute right to intervene. As the U.S. Court of Appeals has stated, "fairness requires that one with such a recognized interest in the outcome of the agency proceeding must be permitted to participate in it from the outset." American Communications Association v. U.S., 298 F.2d 648 (2nd Cir. 1962). See also Elm City Broadcasting Corp. v. U.S., 235 F.2d 811, 816 (D.C. Cir. 1956) (Commission may not deny intervention merely because it thinks intervenor's participation would not aid its decisional process). Because, as stated above, GTE has demonstrated that it is a party in interest, the Bureau believes that GTE's petition should be granted.

4. The Bureau acknowledges that GTE has not participated in earlier stages of this proceeding. TDS's application was announced as the tentative selectee for the Wisconsin 8 market on June 9, 1989.¹ GTE did not file a petition against TDS's application, nor did it comment on the petition filed by Century Cellunet, Inc. However, there is no requirement in Section 1.223(a) that a party intervening as a matter of right to have participated in earlier stages of the designated proceeding. In Algreg Cellular Engineering, 6 FCC Rcd 5299 (Rev. Bd. 1991), the Review Board agreed to allow a party to intervene in a designated proceeding despite the fact

¹ See Public Notice, Report No. CL-89-174 (released June 9, 1989).

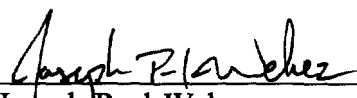
that the party had not filed any petitions to deny or participated in the lengthy investigation prior to designation. As to the contention that the party had a right to intervene because it had an interest in the outcome,² the Review Board stated that there is "[s]olid legal authority" supporting that position. Id. at 5300. Accordingly, because Section 1.223(a) of the Rules allows GTE to intervene as a matter of right, the fact that it has not participated to this point is not relevant. GTE's lack of participation has not reduced GTE's rights in the market. If TDS is found unqualified, and a new lottery is held, GTE's application will be included despite GTE's non-participation.

For the foregoing reasons, the Bureau supports the Petition to Intervene filed by GTE.

Respectfully submitted,

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

March 22, 1994

By: 
Joseph Paul Weber
Trial Attorney

² The party petitioning to intervene in the Algreg Cellular Engineering proceeding had interests identical to those of GTE. ZDT Partnership was an applicant in 11 of the cellular markets at issue in that case. ZDT's applications, like that of GTE, were still pending giving ZDT an interest in the outcome.

CERTIFICATE OF SERVICE

I, Elizabeth Williams, do hereby certify that on March 22, 1994, copies of the foregoing Comments in Support of GTE Mobilnet, Inc.'s Petition to Intervene were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

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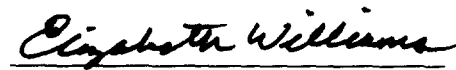
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